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Sen. Pat Toomey on why the USMCA falls short  
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DOLLAR: Hi, I'm David Dollar, host of the Brookings trade podcast, "[Dollar & Sense](#)." Today, my guest is Senator Pat Toomey, Republican of Pennsylvania and a leading free trade advocate in the Congress. We're going to talk about the important trade issues facing Congress, including the U.S.-Mexico-Canada Agreement, the China deal, and the 232 tariffs. So welcome to the show, Senator.

TOOMEY: Thanks very much for having me.

DOLLAR: So let's start with the big picture question of what is international trade mean for your state, Pennsylvania?

TOOMEY: Well, it means a lot of jobs, and jobs that tend to be higher paying than most other jobs. And these are jobs, of course, in the export sector or serving companies that are in the export sector. And, you know, that's the first thing people tend to focus on when they talk about this discussion. And that's a very important thing, but I think sometimes what is overlooked is the benefit to consumers of having the opportunity to choose between domestic and foreign produced goods and services. That choice inevitably means there's competition between domestic and foreign producers. Competition forces the best than in any context in which it occurs, it tends to expand choices and drive down prices, and when consumers have the chance to buy products and services at a lower price than they otherwise would the savings is available to be invested in other goods and serve.

So my point is that it's really important to have trade for the sake of the jobs that are created, but there are also the unseen jobs that come when consumers save money, purchase things at lower prices than they otherwise would get, and are able to elevate their standard of living and purchase things with that savings that they wouldn't otherwise.

DOLLAR: So the most important trade issue facing Congress right now is this renegotiated NAFTA called the U.S.-Canada-Mexico Agreement. I know you have some criticisms, which I'll be interested in here in a moment, but I thought I'd ask first: Do you see any improvements in the new NAFTA compared to the original NAFTA?

TOOMEY: I do. I think there's a category that's worth noting and that is mostly in the technology area. As you know, when NAFTA was signed in 1993, there wasn't much, if any, of an Internet. There was no digital economy. And so what has evolved in the meantime between the United States, Mexico and Canada, are practices that are generally good practices. So, for instance, we don't require data localization. We don't tax digital downloads. However, those are practices. They're not codified anywhere, and this new NAFTA codifies those things. There's also a

very, very minor relaxation of protectionist policy in Canada with respect to certain agricultural products – especially dairy.

I do think it's worth noting that these improvements, especially the technology-related improvements, are lifted almost entirely from the Trans-Pacific Partnership, which the administration has abandoned. And, as I say, they codify existing practices. It's not really groundbreaking new policy. So, that's good.

DOLLAR: I agree with you. That's probably the most important step forward.

TOOMEY: Yeah.

DOLLAR: Because there is a bad trend toward data localization around the world and we don't see it yet in North America, but it's good to have the rules set down.

TOOMEY: It's good to codify the good practices that we've been following.

DOLLAR: And then what about your criticisms of the renegotiated NAFTA?

TOOMEY: So that's a longer list.

DOLLER: So pick and choose.

TOOMEY: So, let me let me just step back for a second and provide a little context. I'm convinced the USMC is the first trade agreement the United States has ever been entered into – at least in modern times, [and] at least to my knowledge – in which the intent was to diminish trade. And I think that's a very fair assessment. If you look at what NAFTA is, NAFTA is a free trade agreement. It is free and fair and reciprocal and there are zero tariffs on virtually all manufactured and agricultural goods. So you can't argue that it's somehow not reciprocal, which does describe our trade relationship with many other places, but not this one. From the time we signed NAFTA into law through this year, American exports to Mexico are up over 500 percent. Pennsylvania exports to Mexico are up over 500 percent. But, during that time, imports from Mexico have grown even more. And so we have a trade deficit with Mexico. And every credible and reputable economist I know thinks that that doesn't matter a bit in terms of measuring economic health, but that's not the view of the administration. And so I believe that they set out to renegotiate NAFTA for the purpose of diminishing trade with Mexico, especially in the areas that have given rise to this trade deficit. So that's the backdrop. That's a bad reason to be renegotiating a trade agreement, and it has led to bad policies.

One is really what I would consider managed trade in the auto sector. We have had free trade in the auto sector; we won't under USMC. Instead, we have minimum wage requirements, we have new and more onerous country-specific rules of origin, and we contemplate tariffs and

quotas — and all designed to diminish Mexico's ability to compete in this space. And corollary, to drive up costs for American consumers when they buy cars and car parts from Mexico. That's one.

A second thing that's unprecedented and a really bad idea is the expiration date. USMCA goes “poof” in 16 years unless all three of the signatories simultaneously agree to extend it and there's no reason to be very confident that that's going to happen. So there's a risk inherent in any kind of long term investment that goes cross-border. The risk being you don't know what the trade rules will be like when you are attempting to generate a return on those investment. So that's going to have a chilling effect, which I think is by design.

And then a third area that I object to is the virtual elimination of the investor-state dispute settlement mechanism. This is a mechanism that has been in almost every single trade and investment agreement everywhere in the world for the simple reason that American investors, when they make an investment overseas, they often don't get a fair shake in a local court when there is a business dispute between them and some other entity. And that's true about Canada and Mexico. So we have always had this agreement that there'll be a mechanism that an investor can choose to go to for an adjudication of such a business dispute. It's completely eliminated with respect to Canada under USMCA, and it's narrowed down to just five industries, I think, in Mexico. And again, it is done with the wrong intent. It's done with the intent to make it more risky to make an investment. And I think that's driven by the misguided notion that U.S. direct foreign investment in other countries comes at the expense of investments in the United States, which, of course, is overwhelmingly false. It is good for America and for American jobs and our economy to have multinational companies headquartered in the United States.

So those are three. Very briefly I'll touch on two others that emerged later in the negotiations. One is very, very extensive and I think onerous requirements that American taxpayers will now enforce new laws forced on Mexico with respect to collective bargaining rights. We've always acknowledged that other countries' labor laws are their business. Now we're taking the position that not only will we force Mexico to pass certain labor laws, but we're going to force Americans to pay for the enforcement. And, by the way, the design of this mechanism is such that it significantly increases the risk that it will be used as an excuse to impose still further tariffs and obstacles to trade down the road. That's why I think some of our very staunchly protectionist Democrats in the House and Senate are now supporting this agreement.

And then finally there's abandoning any intellectual property protection for biologics — a very, very exciting and important new category of medicines. We in the United States have 12 years of protection for the data that is used to generate these amazing, miraculous drugs that are

often curative, especially in the cancer space. And, at the insistence of Speaker Pelosi, our administration just abandoned that zero. There's no there's no agreed upon protection for this data.

So, when I look at this overall, I see an agreement that moves backwards on trade, that is going to diminish growth relative to what it otherwise would have been — I don't want to overstate it, this isn't going to crater the American economy by any means —but it's a lost opportunity and it's a movement backward.

DOLLAR: Yeah, I agree with you, Senator that the domestic content provisions...you know, we don't really have that in other agreements. That just seems like quite a bad step backwards. And as you say, it seems to be aimed at reducing the amount of trade. It will tend to make automobiles in particular more expensive in the United States, hit the consumers, and also make it harder for us to export. You know, we do have quite a bit of exports in that sector.

TOOMEY: That's exactly right. I think our economy right now is very, very strong. Very robust. Strong growth, [and] tremendous employment numbers. The November number was amazing. It's a very, very good story; however, when you dig beneath the surface, you see that our manufacturing sector is actually in a mild recession. We've lost employment and we have lost all growth in manufacturing. I think that's a direct result of the tariffs that have been imposed. And we might someday reach such a good agreement with China that will say this was all worth it. That's possible. I hope that's what happens. But we should acknowledge that these obstacles to trade aren't good for American manufacturing. If they were, why are we in a recession right now in manufacturing when the rest of the economy is booming? And so, it was just a big mistake. I think you're exactly right. When you raise the cost of manufacturing autos and auto parts in North America, you will diminish jobs in them in the United States of America because producing cars will be less competitive. We'll be less able to export them.

DOLLAR: Since you brought up China why don't we take up that next. So we've put tariffs on 360 billion dollars of imports from China — mostly at a 25 percent rate. Now we've negotiated this so-called “Phase 1 deal” or mini deal where China will buy more agricultural products from the U.S. and we're going to remove, as I calculated, about 10 percent of the tariffs. So do you have a reaction to this deal?

TOOMEY: Well, I do. There are a couple of other elements that we hope we'll see documented in this deal. Some change in behavior on the part of the Chinese with respect to intellectual property protection and diminishing the coercive technology transfers. Some opening of their economy to financial services, which they've been promising for a long time, [and which]

hasn't happened. I certainly hope that that it does. I should also say I think of China in a different category than I think of other trading partners that we have. And the reason I say that is because I think China is a unique case. It's the second biggest economy in the world. It's run by an increasingly authoritarian regime that is engaging in a multi-year very harsh crackdown on dissent and freedom of religion, and freedom of expression. It's badly abusing the Uighurs. It's badly abusing the people of Tibet. It's increasingly not willing to agree to its own commitments in Hong Kong. And I think it has the ambition — this regime in China — has the ambition to be able to project force and achieve hegemony, at least in the western Pacific and probably beyond. So that is unique. There's no other country in the world that poses those geopolitical risks. And I think that should inform our judgment about dealing with China as well.

DOLLAR: Right. So do we want to make a trade deal with China then?

TOOMEY: That's a that's a fair question, right? I think if the substance of the deal is just they're buying more soybeans, that's not a good outcome. If the substance of the deal is that they're going to really change their M.O. with respect to basic, important fundamental understandings in international commerce, then I think we probably do. We are better off economically being able to trade with China, but we've got to go into this, I think, holistically and really thinking about what is our position vis a vis China in the geopolitical context.

DOLLAR: Right. And it's not going to be easy to get China to change.

TOOMEY: Very hard.

DOLLAR: You mentioned the Trans-Pacific Partnership before. That was a good agreement among like-minded countries not including China. Set standards, create an incentive for China to join. So, most economists like myself, we think it was a mistake for the U.S. to pull out of that.

TOOMEY: Yeah. I thought we should do more to protect intellectual property, especially biologics. I thought that the USMCA is much worse still. But, with a few tweaks, I think the Trans-Pacific Partnership would have been a really great counterweight to China. Right? We would be bringing in very rapidly growing, rapidly developing economies. Vietnam comes to mind. Vietnam is a big country. 80 million people starting at a very low economic level and growing very, very quickly. Yeah, there's a nominally communist regime in control, just like there's a nominally communist regime in Beijing, but the actual economic practices they're pursuing are a lot more complicated than that. And it's an opportunity to get them to play by our rules, which is better for us than having them play by the Chinese rules.

DOLLAR: Yeah. I worked on Vietnam for a long time for the World Bank. I think your understanding is correct. It is run by a Communist Party like China, but you have an open Internet

[and] you actually have a lot more freedom of expression. I don't want to exaggerate that, but you have more than in China. And you've got a pretty extraordinary capitalist-based economy that's developed there and it's just shown what that can do for a poor country.

TOOMEY: Yeah. So, we could systematically go through all of the countries that have signed on the TPP and enter into bilateral trade agreements with each of them. And that would be better than not doing anything, but we've got a platform that's really mostly very, very good that I think one way or another we ought to be we ought to be participating in.

DOLLAR: If I could bring up one more topic it would be the 232 tariffs that we've introduced for national security reasons, particularly on steel and aluminum. You've been a critic, and I believe you and Senator Mark Warner have introduced a bill that would bring some change to how we do the 232 tariffs. Could you talk a little bit about the issue in your bill?

TOOMEY: The beginning that we should keep in mind is that the Constitution assigns to Congress the responsibility for managing trade with other countries, including establishing tariffs and the level of tariffs if Congress sees fit. We delegated a great deal of that authority to the executive branch decades ago, and I think the president has misapplied it. And 232, it is meant to be used when there is a threat to American national security. The modest amounts of steel and aluminum that we import from Mexico and Canada — Canada, we even have a trade surplus in steel. So to argue that somehow that's a threat to America's national security...it's just not true. And so they shouldn't be used this way. And so it struck me that maybe this is a moment where we could put together a bipartisan coalition that would simply restore to Congress the responsibility that the Constitution assigns to us.

So Mark Warner and I, as you've pointed out, have introduced legislation that's very simple. It simply says [that] if a president wishes to invoke Section 232 of our trade law, invoke a threat to national security, and impose tariffs on another country, he or she must first come to Congress, make the case, and we have to vote. And if a president makes a compelling case that there's a national security risk to the United States I'm sure that Congress would vote in the affirmative and then the president can impose tariffs. But absent that congressional assent, I don't think a president should be able to do this unilaterally.

DOLLAR: Right. I agree with you that the steel and aluminum tariffs, they seem like a pretty tough sell as a national security issue. We actually import very little from China because we've hit them with all kinds of anti-dumping duties. So it's mostly, aside from Canada and Mexico, you've got South Korea, Germany, Japan...these are all pretty close allies of the United States. I can tell

you it really undermines our credibility around the world when we do things and people think that this is really just old-fashioned protectionism. This is not really any national security concern.

TOOMEY: That's right. And with respect to some of the countries you just mentioned...with Mexico and Canada, it was meant to coerce them to renegotiate an agreement, including terms that they didn't want to agree to. With respect to South Korea, it involved putting quotas on their steel exports to the United States, which that runs completely contrary to free trade. So, I think it was an unfortunate episode. I do have 19 co-sponsors on my legislation. Got Democrats and Republicans — almost equal numbers and including members on both sides of the aisle on the Finance Committee, which is a committee of jurisdiction. So we've gotten some traction with this. We'll see where it goes.

DOLLAR: So last question, Senator. A lot of people run away from the phrase free trade. I like to consider myself one of the last free trade economists, and I wonder if you feel somewhat lonely in Congress as a genuine advocate for free trade?

TOOMEY: Very recently I've begun to feel a little bit lonely in this regard, yeah. I think that's fair to say. As an abstraction I think the vast majority of my Republican Senate colleagues still think of themselves as free traders and believe in free trade, but I think it's important to manifest that in the things we do and the agreements we enter into.

DOLLAR: I'm David Dollar and I've been talking to Senator Pat Toomey, Republican of Pennsylvania, about the important trade issues facing the U.S. Congress. Thank you very much, Senator.

TOOMEY: Thanks for having me, David.

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